

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SHAUNA ZIEMER, as Executrix of : CIVIL ACTION – LAW
The Estate of Darrin E. Ziemer :
Plaintiffs : JURY TRIAL DEMANDED
v. : Judge Matthew W. Brann

NORFOLK SOUTHERN RAILWAY :
COMPANY and CLINTON TOWNSHIP :
Defendants :

ANGELA LYNNE MARTIN, Individually :
and as Administratrix of the ESTATE OF :
HOWARD EDWARD MARTIN, JR. :
Plaintiffs : No. 4:15-CV-02034-MWB
v. :

NORFOLK SOUTHERN RAILWAY :
COMPANY, TODD MICHAEL :
BUBNIS, JAMES ERNEST MOFFET, :
and CLINTON TOWNSHIP :
Defendants : (Filed Electronically)

**DEFENDANTS', NORFOLK SOUTHERN RAILWAY COMPANY, TODD
BUBNIS, AND JAMES MOFFETT, MOTION FOR SUMMARY
JUDGMENT**

AND NOW, comes Norfolk Southern Railway Company, Todd Bubnis, and James Moffett (collectively referred to herein as "Norfolk Southern" or "the railroad"), Defendants, by and through their attorneys, NAUMAN, SMITH, SHISSLER, & HALL, LLP, and move this Court pursuant to Fed. R. Civ. P. 56 for

summary judgment in their favor and against Angela Martin and Shauna Ziemer, Plaintiffs, as to any and all claims asserted within their Amended Complaints, representing the following in support thereof:

1. Plaintiff Martin has asserted various claims of negligence against Norfolk Southern Railway Company, Todd Bubnis, and James Moffett in her Amended Complaint dated February 16, 2017 and July 18, 2017 arising out of a crossing accident that occurred on August 15, 2014.
2. Plaintiff Ziemer has asserted various claims of negligence against Norfolk Southern Railway Company in her Amended Complaint dated July 18, 2017 arising out of a crossing accident that occurred on August 15, 2014.
3. Plaintiffs' claims regarding train speed, train horn, and crossing signage are federally preempted and therefore Norfolk Southern is entitled to judgment in its favor as a matter of law.
4. Additionally, the assertion that Norfolk Southern was negligent in failing to place signs outside of its right of way, failing to close the crossing or not operate over the crossing, and failure to ensure specific sight distances and approach angles, must fail since the railroad has no duty to perform any of these tasks, and therefore it cannot be negligent as a matter of law and summary judgment is appropriate.

5. Finally, Plaintiffs have alleged insufficient material facts to support their claims that Norfolk Southern was negligent in maintaining a safe crossing, operating the train in a safe manner, and providing adequate warning of the train's approach, and therefore summary judgment is appropriate.
6. As there are no genuine issues of material fact which would support Plaintiffs' claims as set forth above, summary judgment pursuant to Fed. R. Civ. P. 56 in favor of Norfolk Southern and against Plaintiffs as to any and all claims asserted within their Amended Complaints against Norfolk Southern is required.

WHEREFORE, Norfolk Southern Railway Company, Todd Bubnis, and James Moffett, Defendants, move for summary judgment in their favor and against Angela Martin and Shauna Ziemer as to any and all claims asserted in their Amended Complaints.

NAUMAN, SMITH, SHISSLER, & HALL, LLP

By: /s/Craig J. Staudenmaier

Craig J. Staudenmaier, Esquire

Supreme Court ID #34996

Joshua D. Bonn, Esquire

Supreme Court ID #93967

200 North Third Street, P.O. Box 840

Harrisburg PA, 17108-0840

Counsel for Norfolk Southern Railway Company, Todd Bubnis, and James Moffett

Date: June 28, 2019

CERTIFICATE OF SERVICE

AND NOW, on the date stated below, I, **Karen L. Gagne**, an employee of Nauman, Smith, Shissler & Hall, LLP, hereby certify that I this day served the foregoing '**Defendants**', *Norfolk Southern Railway Company, Todd Bubnis, and James Moffett, Motion for Summary Judgment* by electronic filing and/or by United States mail, first class, postage prepaid, at Harrisburg, Pennsylvania, addressed to the following:

Edward C. Shensky, Esquire
Jeffrey A. Krawitz, Esquire
Stark & Stark, P.C.
777 Township Line Road, Suite 120
Yardley, PA 19067
(*Counsel for Martin Estate*)

J. Timothy Hinton, Jr., Esquire
Michael F. Cosgrove, Esquire
Haggerty Hinton & Cosgrove LLP
203 Franklin Avenue
Scranton, PA 18503
(*Counsel for Ziemer Estate*)

David J. MacMain, Esquire
John P. McAvoy, Esquire
Danielle S. Burke, Esquire
The MacMain Law Group, LLC
433 W. Market Street, Suite 200
West Chester, PA 19382
(*Counsel for Clinton Township*)

/s/Karen L. Gagne
Karen L. Gagne, Secretary

Date: June 28, 2019